

State of Wisconsin



1995 Assembly Bill 10

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1995 WISCONSIN ACT 24

AN ACT *to amend* 48.34 (intro.), 102.07 (13), 102.07 (14), 814.04 (intro.), 895.035 (2), 895.035 (4), 943.012 (intro.), 973.07 and 973.09 (7m) (a); and *to create* 48.245 (2g), 48.32 (1x), 48.34 (7t), 895.035 (4m) and 943.017 of the statutes; **relating to:** marking property of others without the owner's consent and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.245 (2g) of the statutes is created to read:

48.245 (2g) If the informal disposition is based on an allegation that the child violated s. 943.017 and the child has attained the minimum age at which a child may be adjudicated delinquent, the informal disposition may require that the child participate for not less than 10 hours nor more than 100 hours in a supervised work program under s. 48.34 (9) or perform not less than 10 hours nor more than 100 hours of other community service work, except that if the child has not attained 14 years of age the maximum number of hours is 40.

SECTION 2. 48.32 (1x) of the statutes is created to read:

48.32 (1x) If the petition alleges that the child violated s. 943.017 and the child has attained the minimum age at which a child may be adjudicated delinquent, the judge or juvenile court commissioner may require, as a condition of the consent decree, that the child participate for not less than 10 hours nor more than 100 hours in a supervised work program under s. 48.34 (9) or perform not less than 10 hours nor more than 100 hours of other community service work, except that if the child has not

attained 14 years of age the maximum number of hours is 40.

SECTION 3. 48.34 (intro.) of the statutes is amended to read:

48.34 Disposition of child adjudged delinquent. (intro.) If the judge adjudges a child delinquent, he or she shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan. Subsections (4m) and (8) are exclusive dispositions, except that either disposition may be combined with the disposition under sub. (4p), (5), (7m), (7t) or (15). The dispositions under this section are:

SECTION 4. 48.34 (7t) of the statutes is created to read:

48.34 (7t) If the child is adjudicated delinquent under a violation of s. 943.017, the court may require that the child participate for not less than 10 hours nor more than 100 hours in a supervised work program under sub. (9) or perform not less than 10 hours nor more than 100 hours of other community service work, except that if the child has not attained 14 years of age the maximum number of hours is 40.

SECTION 5. 102.07 (13) of the statutes is amended to read:

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

102.07 (13) A child performing uncompensated community service work as a result of an informal disposition under s. 48.245, a consent decree under s. 48.32 or an order under s. 48.34 (7t) or (9) is an employee of the county in which the court ordering the community service work is located. No compensation may be paid to that employee for temporary disability during the healing period.

SECTION 6. 102.07 (14) of the statutes is amended to read:

102.07 (14) An adult performing uncompensated community service work under s. 943.017 (3), 971.38, 973.03 (3), 973.05 (3) or 973.09 is an employee of the county in which the district attorney requiring or the court ordering the community service work is located. No compensation may be paid to that employee for temporary disability during the healing period.

SECTION 6m. 814.04 (intro.) of the statutes is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 101.22 (6) (i) and (6m) (a), 769.313, 814.025, 814.245, 895.035 (4) and (4m), 895.75 (3), 895.77 (2), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

SECTION 7. 895.035 (2) of the statutes is amended to read:

895.035 (2) The parent or parents with custody of a minor child, in any circumstances where he, she or they may not be liable under the common law, are liable for damages to property, for the cost of repairing or replacing property or removing the marking, drawing, writing or etching from property regarding a violation under s. 943.017, for the value of unrecovered stolen property or for personal injury attributable to a wilful, malicious or wanton act of the child. The parent or parents with custody of their minor child are jointly and severally liable with the child for the damages imposed under s. 943.51 for their child's violation of s. 943.50.

SECTION 7d. 895.035 (4) of the statutes is amended to read:

895.035 (4) Except for recovery for graffiti damage under sub. (4m) and for recovery for retail theft under s. 943.51, the maximum recovery from any parent or parents may not exceed \$2,500 for damages resulting from any one act of a child in addition to taxable costs and disbursements and reasonable attorney fees, as determined by the court. If 2 or more children in the custody of the same parent or parents commit the same act the total recovery may not exceed \$2,500, in addition to taxable costs and disbursements. The maximum recovery from any parent or parents for retail theft by their minor child is established under s. 943.51.

SECTION 7e. 895.035 (4m) of the statutes is created to read:

895.035 (4m) The maximum recovery from any parent or parents may not exceed \$4,000 for damages result-

ing from any one act regarding a violation under s. 943.017 of a child in addition to taxable costs and disbursements and reasonable attorney fees, as determined by the court. If 2 or more children in the custody of the same parent or parents commit the same act the total recovery may not exceed \$4,000, in addition to taxable costs and disbursements.

SECTION 8. 943.012 (intro.) of the statutes is amended to read:

943.012 (title) Criminal damage to or graffiti on religious and other property. (intro.) Whoever intentionally causes damage to, intentionally marks, draws or writes with ink or another substance on or intentionally etches into any physical property of another, without the person's consent and with knowledge of the character of the property, is guilty of a Class E felony if the property consists of one or more of the following:

SECTION 9. 943.017 of the statutes is created to read:

943.017 Graffiti. (1) Whoever intentionally marks, draws or writes with paint, ink or another substance on or intentionally etches into the physical property of another without the other person's consent is guilty of a Class A misdemeanor.

(2) Any person violating sub. (1) under any of the following circumstances is guilty of a Class D felony:

(a) The property under sub. (1) is a vehicle or a highway, as defined in s. 943.01 (2) (a) 1., and the marking, drawing, writing or etching is of a kind which is likely to cause injury to a person or further property damage.

(b) The property under sub. (1) belongs to a public utility or common carrier and the marking, drawing, writing or etching is of a kind which is likely to impair the services of the public utility or common carrier.

(c) The property under sub. (1) belongs to a person who is or was a witness, as defined in s. 940.41 (3), or a grand or petit juror and the marking, drawing, writing or etching was caused by reason of the owner's having attended or testified as a witness or by reason of any verdict or indictment assented to by the owner.

(d) If the total property affected in violation of sub. (1) is reduced in value by more than \$1,000. For the purposes of this paragraph, property is reduced in value by the amount which it would cost to repair or replace it or to remove the marking, drawing, writing or etching, whichever is less.

(e) The property affected is on state-owned land and is listed on the registry under s. 943.01.

(3) (a) In addition to any other penalties that may apply to a crime under this section, the court may require that a convicted defendant perform 100 hours of community service work for an individual, a public agency or a nonprofit charitable organization. The court may order community service work that is designed to show the defendant the impact of his or her wrongdoing. The court shall allow the victim to make suggestions regarding appropriate community service work. If the court orders

community service work, the court shall ensure that the defendant receives a written statement of the community service order and that the community service order is monitored.

(b) Any individual, organization or agency acting in good faith to whom or to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.

(c) This subsection applies whether the court imposes a sentence or places the defendant on probation.

(d) If the defendant is not placed on probation and the court orders community service work, the court shall specify in its order under this subsection the method of monitoring the defendant's compliance with this subsection and the deadline for completing the work that is ordered. The court shall inform the defendant of the potential penalties for noncompliance that would apply under s. 973.07.

(4) If more than one item of property is marked, drawn or written upon or etched into under a single intent and design, the markings, drawings or writings on or etchings into all the property may be prosecuted as a single forfeiture crime.

(5) In any case under this section involving more than one act of marking, drawing, writing or etching but prosecuted as a single crime, it is sufficient to allege generally that unlawful marking, drawing or writing on or etching into property was committed between certain dates. At the trial, evidence may be given of any such unlawful marking, drawing, writing or etching that was committed on or between the dates alleged.

SECTION 10. 973.07 of the statutes is amended to read:

973.07 (title) Failure to pay fine or costs or to comply with certain community service work. If the fine, costs, penalty assessment, jail assessment, crime victim and witness assistance surcharge, applicable deoxyribonucleic acid analysis surcharge, applicable drug abuse program improvement surcharge, applicable domestic

abuse assessment, applicable driver improvement surcharge, applicable weapons assessment, applicable uninsured employer assessment, applicable environmental assessment, applicable wild animal protection assessment, applicable natural resources assessment and applicable natural resources restitution payments are not paid or community service work under s. 943.017 (3) is not completed as required by the sentence, the defendant may be committed to the county jail until the fine, costs, penalty assessment, jail assessment, crime victim and witness assistance surcharge, applicable deoxyribonucleic acid analysis surcharge, applicable drug abuse program improvement surcharge, applicable domestic abuse assessment, applicable driver improvement surcharge, applicable weapons assessment, applicable uninsured employer assessment, applicable environmental assessment, applicable wild animal protection assessment, applicable natural resources assessment or applicable natural resources restitution payments are paid or discharged, or the community service work under s. 943.017 (3) is completed, for a period fixed by the court not to exceed 6 months.

SECTION 11. 973.09 (7m) (a) of the statutes is amended to read:

973.09 (7m) (a) ~~The~~ Except as provided in s. 943.017 (3), the court may require as a condition of probation that the probationer perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the offense and any other offense which is read into the record at the time of conviction. An order may only apply if agreed to by the probationer and the organization or agency. The court shall ensure that the probationer is provided a written statement of the terms of the community service order and that the community service order is monitored. If the court requires the conditions provided in this subsection and sub. (4), the probationer reduces the period of confinement under sub. (4) at a rate of one day for each 3 days of work performed. A day of work equals 8 hours of work performed.